

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Civil Citation Issued
to Brent Rothgarn

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A prehearing conference was held on June 19, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on June 6, 2012.

Appearances: Conservation Officer Daniel R. McBroom, on behalf of the Department of Natural Resources (Department); Brent Rothgarn, on his own behalf.

At the beginning of the prehearing conference, the parties agreed to convert the prehearing conference to a hearing, and to conduct the hearing by telephone. Mr. Rothgarn was fully informed that he had the right to a full hearing at a later date, but waived that right and chose to proceed. The parties were placed under oath, and their testimony was taken. The hearing record closed at the end of the telephone hearing on June 19, 2012.

STATEMENT OF THE ISSUES

Did Mr. Rothgarn violate Minn. Stat. § 84D.10, subd. 4(b),¹ by transporting a boat without the drain plug removed or opened?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF THE FACTS

The facts of this matter are not disputed. On May 12, 2012, Officer McBroom and other officers were conducting a check of boats at a public access in Lake City, Minnesota, as part of the Department's effort to enforce the laws intended to deter the spread of invasive species. The Department has broadly advertised the law that requires drain plugs to be open or removed while a boat is transported. Prior to the fishing opener, the Department had directed its officers that citations should be issued

¹ Minnesota Statutes are cited to the 2010 Edition.

for violations. On this date, Officer McBroom was checking drivers as they entered the landing to be sure that the plugs were not in the boats as they were being transported. He observed that Mr. Rothgarn's plug was in the boat, approached him to discuss the violation, and issued a citation.

Minnesota Statutes § 84D.10, subd. 4(b) states: "Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment."

Mr. Rothgarn is aware of the law that requires that plugs be open or removed during transport. He lives just across Highway 61 from the public access, a few hundred yards from the park. Because he lives within sight of the boat launch, and because it was a busy day, he prepared his boat at his home, and then pulled it into the park and up to the boat launch when he saw that there was an opening. He did this to prevent a back-up at the launch.

Mr. Rothgarn admits that he was annoyed with the officer for issuing him a citation rather than a warning, particularly because Mr. Rothgarn told the truth about leaving the plug in. Because of the lay-out of the park, he could have lied and told the officer that he put the plug in after entering the park, and the officer would not have been able to refute that. Mr. Rothgarn is familiar with the law, has been fishing for years, and is well-aware of the Department's efforts to prevent the spread of invasive species. He is also aware that many officers were giving warnings rather than citations on that day, and believes that a warning would have been sufficient under the circumstances.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSION

Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Rothgarn filed a timely appeal and request for hearing.

Mr. Rothgarn violated Minn. Stat. § 84D.10, subd. 4(b), on May 12, 2012, by transporting a boat without removing or opening the drain plug.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the civil citation issued to Brent Rothgarn be AFFIRMED.

Dated: June 21, 2012

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may within those five days comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

There is no dispute about the facts of this case. Mr. Rothgarn admits that the drain plug was in his boat when he pulled it from his home to the boat launch. He does not believe the citation was appropriate because his home is just across the street from the boat launch and, in order to help speed the process at the boat launch on the day of the fishing opener, he prepared his boat at home and then moved it to the boat launch when he saw that the access was open.

Mr. Rothgarn emphasized that he has been fishing for years, he is aware of the Department's efforts to deter the spread of invasive species, and he is careful to drain and clean his boat. Mr. Rothgarn is aware that many officers were issuing warnings rather than citations for transporting boats with the plugs in place, and stressed that he was truthful when he could have misled the officer. He believes that a warning would have been more appropriate under the circumstances.

The citation was properly issued. It is within the discretion of the commissioner to affirm the citation or to reduce the citation to a warning.

B.J.H.